Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 79-1804

In the Supreme Court of the United States

OCTOBER TERM, 1979

RODOLFO GARCIA-JARAMILLO, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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The petition for a writ of certiorari in this civil case was filed out of time. The judgment of the court of appeals was entered on September 24, 1979 (Pet. App. 18-23), and the order denying rehearing was entered on January 2, 1980 (Pet. App. 24). The time for filing a petition for a writ of certiorari was not extended, and it therefore expired on April 1, 1980. 28 U.S.C. 2101(c).[1] The petition

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[1]On February 4, 1980, one month after the court of appeals had denied his petition for rehearing, petitioner filed a "Petition Directing Respondent to Receive Petitioner's Additional Evidence." The court of appeals denied this petition without comment on February 13, 1980 (Pet. App. 25). The time to seek certiorari, however, runs from the date of denial of a timely petition for rehearing and is not tolled by the filing of other motions that do not lead to an alteration of the court of appeals' judgment. See R. Stern & E. Gressman, *Supreme Court Practice* 395-403 (5th ed. 1978).

was filed on May 12, 1980. The time limits of Section 2101(c) are jurisdictional. *Department of Banking* v. *Pink*, 317 U.S. 264 (1942).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

MAY 1980

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